IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2178 OF 2005

Devendra Prakash Kulshrestha ...Petitioner

Versus

Kishore Chawla & Anr ...Respondents

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Mr. K.S. Kalappura, Advocate for Petitioner

Mr. Rajesh More, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 5TH OCTOBER, 2005

P. C.:-

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The petitioner has prayed for quashing of process issued against him in Criminal Case No.459/SS/2005 which is pending in the Court of learned M.M. 10th Court, Andheri, Mumbai. In the said case, process has been issued against the petitioner under Section 138 of Negotiable Instruments Act.

3. The petitioner had preferred an application before the learned Magistrate for recall of process. The learned Magistrate rejected the said application by order dated 29.6.2005. Being aggrieved thereby,

this petition has been preferred. In view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal & Ors. reported in (2004) 7 SCC 338,** it is clear that the Magistrate does not have power to recall the process. In this view of the matter, I am not inclined to interfere with the order of the learned Magistrate dated 29.6.2005.

3. However, for the reasons recorded in the decision of this Court in the case of **V.K. Jain & Ors. Vs. Pratap Vs. Padode and Anr, reported in 2005(3) Mh.L.J. 778,** in my opinion, the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioner to prefer revision before the concerned Sessions Court. The learned advocate for the petitioner states that the necessary revision would be preferred within a period of four weeks from today. It is made clear the revision shall be preferred against the order of the Magistrate issuing process and not in respect of the order of the learned Magistrate rejecting the application of the petitioner for recall of process.

5. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

6. Writ Petition is disposed of.

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